IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3649 of 2003 (O&M)

Date of Decision: 10.07.2007

Balbir alias Balbir Singh ...Appellant

Vs.

Om Parkash ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Amit Jain, Advocate,
for the appellant.

Vinod K.Sharma, J. (Oral)

This order shall dispose of two regular second appeals bearing RSA No.3649 of 2003 titled Balbir alias Balbir Singh Vs. Om Parkash and RSA No.3749 of 2003 titled Balbir alias Balbir Singh Vs. Zile Singh and Ors. as they arise out of common judgment and common questions of law and facts are involved in both these appeals.

Present appeals have been filed against the judgments and decrees passed by the learned courts below vide which the suit for declaration with consequential relief of permanent injunction has been

ordered to be dismissed.

The plaintiff-appellant has challenged the sale deed in favour of the defendant-respondents made by his father on the ground that the property in dispute was ancestral property of Hindu undivided family and therefore, he had no right to dispose of the said property without any legal necessity. The suit was contested and one of the issues framed by the learned trial court was "Whether the sale deed dated 4.4.1988 is null and void being without consideration and without legal necessity?"

Both the courts below have recorded a concurrent finding of fact that the property was not ancestral in the hands of Thana as the plaintiff-appellant had failed to lead any documentary, oral or other evidence to prove its ancestral nature. Thus, issue No.1 has been decided against the plaintiff-appellant. Consequently the suit was also dismissed.

Learned counsel appearing for the appellant vehemently contended that the learned lower appellate court while affirming the findings with regard to non-ancestral nature of the property has gone further to hold that even if property is taken to be ancestral then also the sale was for legal necessity as after the sale of the said property certain land was purchased by Thana in the year 1986. The contention of the learned counsel for the appellant is that the said finding is perverse on the face of the record as the sale deed was executed in the year 1988 and therefore, there was no question of sale consideration being used for legal necessity as is held by the learned lower appellate court.

I find no force in this contention, as it is not disputed that the

finding referred to above was only in the alternative. However, the finding by the learned trial court that the property was not ancestral was affirmed by the learned lower appellate court and in view of this finding there was hardly any reason for the courts to go into the question as to whether the sale was for legal necessity or not.

Learned counsel for the appellant further contended that the courts below have failed to appreciate the evidence led by the plaintiff and especially the statement made by Zile Singh in his cross-examination that the parties were staying in the house since the time of their forefathers. This contention is also without any force as it is not open in regular second appeal to reappraise the evidence. Even otherwise, it was for the plaintiff to prove the ancestral nature of the property and once no evidence was led either by way of oral or documentary evidence, the finding recorded by the courts below cannot be said to be perverse which may warrant interference by this court in regular second appeal.

No question of law muchless substantial question of law arises in both these appeals for consideration of this court.

Consequently, both the appeals are dismissed.

July 10,2007 **(Vinod K.Sharma)**
rp **Judge**